IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2024 OF 2005
IN
SECOND APPEAL (ST.)NO.25935 OF 2005

Anna Laxman Tupe @ Yadav & Ors. ..Applicants.

V/s.

Sitaram L. Yadav @ Tupe. ..Respondent.

Mr.S.M.Kamble for applicants.

Mr.R.V.More for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2006.

P.C. :

1. This application is for condonation of delay in filing the Second Appeal. The delay as computed by the office is about 260 days. The reason stated in the application is that the advocate appearing before the lower court in appeal failed to appear before the court, on account of which appeal was dismissed for default. Besides the advocate did not bother to inform the applicant about the order passed by the lower court dismissing applicants' appeal on 30th November, 2004.

2. The respondent has filed reply opposing this application. According to the respondent, applicants

had knowledge about the dismissal of the appeal. It is stated in paragraph-4 of the reply affidavit that the dismissal of the appeal was made known to the applicants as both the families are related to each other closely and all relatives were also knowing the dismissal of the aforesaid appeal. The applicants have controverted that statement by filing rejoinder affidavit. It is interesting to note that no material fact as to when the intimation was given to the applicants about the dismissal of the appeal either by the respondent or by other relatives is specified in the reply affidavit. In that sense, objection taken on behalf of the respondent cannot be countenanced. In other words, the explanation offered in the application will have to be accepted and being sufficient cause, the application deserves to be allowed in terms of prayer clause (b).

3. Second appeal is ordered to be registered forthwith.